

EXHIBIT A

Excerpt of Transcript of Hearing on September 14, 2011, pages 20-27

1 UNITED STATES BANKRUPTCY COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 Lead Case No. 08-13555 (JMP) ; 08-01420 (JMP) (SIPA)

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5 In the Matters of:

6

7 LEHMAN BROTHERS HOLDINGS INC., et al.,
8 Debtors.

9 - - - - -x

10 In the Matters of:

11

12 LEHMAN BROTHERS INC.,
13 Debtor.

14 - - - - -x

15 U.S. Bankruptcy Court
16 One Bowling Green
17 New York, New York

18

19 September 14, 2011

20 10:02 AM

21

22 B E F O R E:

23 HON. JAMES M. PECK

24 U.S. BANKRUPTCY JUDGE

25

1 term tower one to describe an insurance stack, and I'm not
2 comfortable using that term. So I'm not going to do it again
3 particularly --

4 MR. WASSERMAN: Yes, Your Honor.

5 THE COURT: -- in a week that includes September 11.
6 But I'd like to hear from the insurer. Is the insurer here?

7 Apparently, the insurer is so lacking in concern
8 about the coverage question that the insurer is unrepresented;
9 is that correct?

10 MR. WASSERMAN: I am not sure if the insurer is
11 represented. I know that we have insurance counsel for the
12 estate present who can address that issue. And I am happy to
13 address our understanding of that issue if it pleases the
14 Court.

15 THE COURT: I'm not looking for an evidentiary
16 showing on the question of coverage as much as I'm trying to
17 get a sense as to whether or not the Essex objection is purely
18 theoretical or if there's any substance to it.

19 MR. WASSERMAN: Well, the basis why we believe it is
20 theoretical and that there isn't any substance to it, Your
21 Honor, is that according to the insurers there was a case filed
22 in February 22nd, 2008, which was the Reese case, which was a
23 securities class action, which would have been covered by the
24 2007/2008 policy.

25 It is our belief and I believe it is also the

1 estate's belief, though I will let the estate speak for itself,
2 that the Reese case involved securities questions, which
3 related to allegations relating to LBHI securities and relating
4 to whether or not there were misstatements or omissions in
5 connection to Lehman's financial condition and/or exposure to
6 mortgages. So that is the initial case, which triggered the
7 2007-2008 policy.

8 The New Jersey case, similarly, is a case by an
9 investor who is claiming a securities case against the
10 defendants. And their case is also based on the similar types
11 of alleged misstatements and/or omissions relating to Lehman's
12 or LBHI's financial condition and/or exposure to various
13 mortgage and real estate assets. So because the New Jersey
14 action is related to this action that was first filed in what
15 is a claims made policy, it is our understanding that it is in
16 fact covered.

17 And I will defer to either counsel for the estate or
18 counsel for -- or insurance counsel for the estate if you have
19 any additional questions on that.

20 MR. KRASNOW: Good morning, Your Honor. Richard
21 Krasnow, Weil, Gotshal & Manges on behalf of the debtors. We
22 are not insurance counsel, but just a few introductory
23 comments.

24 Your Honor, the debtors have no objection to the
25 granting of the motion for the reasons that Mr. Wasserman

1 outlined. And we concur with his views with respect to the one
2 objection that was filed.

3 I would make one observation in response to Your
4 Honor's question as to whether or not this is a theoretical
5 issue. Your Honor, we believe that Essex, if you will, stands
6 in the shoes that New Jersey wore when it opposed the last
7 motion where relief was sought to lift the stay to allow for
8 insurance payments to be made, which is to say that ethic,
9 excuse me, Essex's standing is nonexistent.

10 It does -- it has asserted claims. There is
11 litigation with respect to its claims. But it has no rights
12 with respect to either the policies at issue or the policies
13 that it alluded to, which I believe is the 2008/2009 policy
14 years.

15 With respect to the 2007/2008 policy years, I will
16 defer to Mr. Hirsch from the Reed Smith firm, who is insurance
17 counsel to the debtors. But again, my understanding is
18 consistent with what Mr. Wasserman said, which is that the
19 claims that have been asserted by New Jersey are similar to
20 claims that were previously asserted during the 2007/2008
21 policy year. And therefore, under the policies in question and
22 applicable insurance law, there is a relation back.

23 Your Honor, if I could introduce Mr. Hirsch, he is
24 with the firm of Reed Smith. It wasn't clear that he was going
25 to need to speak today. He is admitted in the State of

1 Illinois. He is not admitted in New York. We had not filed
2 any pro hac papers because it might just be a one-day matter.
3 But we would request that he be admitted pro hac for the
4 purpose of today's hearing.

5 THE COURT: He's --

6 MR. HIRSCH: Good morning, Your Honor.

7 THE COURT: He's admitted pro hac, and he needs to
8 recognize that that carries with a \$200 payment obligation.

9 MR. HIRSCH: I think my firm can cover it, Your
10 Honor.

11 THE COURT: Good. And we appreciate all
12 contributions to our treasury.

13 MR. HIRSCH: Your Honor, Mr. Wasserman I believe did
14 state accurately why the New Jersey matter should fall within
15 the '07/'08 tower. I can answer any other questions you have
16 if you have any. But I'd also say there really isn't any
17 dispute on behalf of the estate. If there were a basis to
18 dispute, then I think we would. It would be in the estate's
19 interests. But there really isn't.

20 THE COURT: Okay. I -- Mr. Duffy can speak for
21 himself, but I view his limited objection as being more in the
22 nature of a reservation of rights as to whether or not a
23 particular claim is covered under the 2007/2008 policy or under
24 the 2008/2011 policy. Is there any current question in the
25 mind of the debtor or, if you know, in the mind of the

1 insurance carriers and their representatives as to applicable
2 coverage concerns?

3 MR. HIRSCH: No, there is no question. And I know
4 the position of the insurance carriers because we have
5 correspondence from the insurance carriers. There's no
6 dispute. They took -- the insurance carriers took the position
7 that this matter is in the '07/'08 tower because it relates
8 back to claims first made during that policy period. And
9 again, that's reflected in correspondence. And neither the
10 estate nor any of the insureds has disputed that.

11 THE COURT: Okay. I appreciate your comments.

12 MR. HIRSCH: Thank you, Your Honor.

13 THE COURT: I'll hear from Mr. Duffy. But I'll hear
14 from Mr. Duffy on the same basis that I heard from the State of
15 New Jersey on July 21.

16 MR. DUFFY: Yes, Your Honor. For the record, Todd
17 Duffy, Anderson Kill and Olick on behalf of Essex Equity
18 Holdings Limited.

19 Our objection is, as the Court rightly characterized
20 it, was more of a reservation of rights. We believe that there
21 will be a policy question as to which policy these charges will
22 be associated with and not only these but others. If you see
23 the SASCO objection, they say they've been stuffed into the
24 2007/2008 tower when they really believe that they should be in
25 the 2008/2009 -- or 2008/2009 tower.

1 Now, all of these representations on the record from
2 the debtors' insurance counsel, Mr. Wasserman, they were not in
3 the papers. So we contacted or reached out to debtors' counsel
4 and asked could we see the notice of claim, which usually comes
5 from the risk managers. We received nothing.

6 So I am not an insurance coverage attorney, but our
7 concern is merely that it's not to object to this -- to the
8 Court entering any order granting -- lifting the stay for the
9 settlement. Our objection is that -- our concern is that later
10 on someone will use this order to say this esteemed Court said
11 that this belongs in the 2007/2008 policy tower. And this
12 simple reservation of rights in the order, I don't see why
13 anybody -- if in fact this is the correct tower, I don't see
14 why anybody else would have any objection to that. Thank you,
15 Your Honor.

16 THE COURT: Okay.

17 MR. HIRSCH: Your Honor, may I step up just to
18 clarify one matter? I want to be absolutely clear on this.
19 When I answered your question a moment ago, I understood you
20 were asking about the New Jersey case, which is what we're
21 talking about now.

22 There is a coverage dispute, not before Your Honor
23 right now, regarding whether or not the -- what we call the
24 SASCO litigation, the mortgage-backed securities cases, whether
25 that falls under the '07/'08 tower or the '08/'09 tower.

1 There's a large dispute about that. I wasn't addressing that,
2 and that's not before Your Honor at this moment.

3 THE COURT: Understood. Thank you.

4 MR. DUFFY: Your Honor, may I have one moment? I'm
5 sorry.

6 THE COURT: All right. It has to be quick. This is
7 -- we're already spending more time on this than I think it
8 probably warrants.

9 MR. DUFFY: Yes, Your Honor. Someone mentioned the
10 Reese case previously. And honestly, I think that the Reese
11 case may involve securities questions that are similar to this
12 question. But I -- my understanding from my insurance coverage
13 partners is that that type of, quote, notice to the insurance
14 company suspect, that it's not always considered rock solid
15 notice of claim. So as a result, there may actually be a
16 question, but I don't have anything in front of me to question
17 that.

18 THE COURT: Look --

19 MR. DUFFY: Thank you, Your Honor.

20 THE COURT: -- I've heard enough on this whole
21 subject. This is not a hearing to determine a coverage dispute
22 nor as far as I can tell in the matter before the Court is
23 there any coverage dispute. In fact, based upon the
24 representations of counsel for the insured persons, for the
25 estate, both general bankruptcy counsel for the estate and

1 special insurance counsel for the estate, there is no question
2 but that the proposed settlement to be authorized by virtue of
3 granting the motion is a settlement that falls within the
4 2007/2008 D&O coverage.

5 However, one thing is clear. The motion itself is a
6 motion for what we conveniently describe as a comfort order
7 that authorizes the parties-in-interest to proceed with the
8 proposed settlement but in no way constitutes a determination
9 as to underlying insurance coverage issues. That's a matter
10 that I presume the parties have satisfied themselves is not an
11 issue. Also, I will note for whatever it may be worth that at
12 least in my experience, an insurance carrier rarely if ever
13 will pay out significant settlement proceeds whenever there is
14 a legitimate coverage dispute then pending without involving
15 other carriers that might share the load.

16 So without ruling on the question, I do overrule the
17 Essex Equity Holdings limited objection. And I'm satisfied by
18 the representations that I've heard that there really is no
19 coverage issue here. However, even if there had been no
20 objection by Essex Equity Holdings, the grant of this motion
21 would not have constituted and does not constitute a
22 determination of any coverage issues. That's one of the
23 reasons why this has been largely a waste of time. The motion
24 is granted.

25 MR. WASSERMAN: May I approach to give a CD to your